

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

**IN RE: VALSARTAN PRODUCTS
LIABILITY LITIGATION**

CIVIL ACTION NUMBER:

19-md-02875-RBK-KMW

**TELEPHONIC STATUS
CONFERENCE**

Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101
September 29, 2021
Commencing at 10:00 a.m.

B E F O R E:

**THE HONORABLE ROBERT B. KUGLER
UNITED STATES DISTRICT JUDGE and
THE HONORABLE THOMAS I. VANASKIE (RET.)
SPECIAL MASTER**

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1 **ALSO PRESENT:**

2 LORETTA SMITH, ESQUIRE
3 Judicial Law Clerk to The Honorable Robert B. Kugler

4 Larry MacStravic, Courtroom Deputy
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1 (PROCEEDINGS held via teleconference before The Honorable
2 Robert B. Kugler, United States District Judge, and The
3 Honorable Thomas I. Vanaskie, (Ret.), Special Master, at 10:00
4 a.m.)

5 JUDGE VANASKIE: I think we should be ready to get
6 started.

7 Who will be the spokesperson for the defendants?

8 MR. GOLDBERG: Good morning, Your Honor. This is Seth
9 Goldberg from Duane Morris on behalf of the ZHP parties and the
10 defendants and I'll take the lead but pass the baton to my
11 colleagues as needed.

12 JUDGE VANASKIE: All right. Typical modus operandi,
13 that will be fine.

14 And same on the plaintiffs', is it you, Mr. Slater?

15 MR. SLATER: Hello, Your Honor. Yes, Adam Slater, and
16 yes, we will have multiple people arguing the issues on an
17 issue-by-issue basis.

18 JUDGE VANASKIE: All right, very well.

19 Please follow our standard protocol. Mute your phones
20 or your devices until it's time for you to speak. And if
21 anybody feels a need to leave the call, don't put it on hold.
22 We end up with the music and that's no good.

23 So we will get started and we'll follow the defense
24 agenda letter that I received yesterday. I'm sorry if I caused
25 any confusion today asking for the transcript of the

1 deposition.

2 I wanted to get the pronunciation correct. Is it
3 Panigrahy or how do you pronounce the deponent's name?

4 MR. NIGH: Good morning, Your Honor. It's Daniel
5 Nigh. It's Panigrahy.

6 JUDGE VANASKIE: Panigrahy. Thanks, Mr. Nigh.

7 Who will be addressing this issue on behalf of the
8 defense?

9 MR. TRISCHLER: Your Honor, good morning. This is
10 Clem Trischler. I will take this issue for the defendants.

11 JUDGE VANASKIE: So, Mr. Trischler, the defense is
12 asking for three additional hours for the deposition of -- is
13 it Dr. Panigrahy?

14 MR. TRISCHLER: Yes, it's Dr. Panigrahy, and you are
15 correct in terms of the additional time that we have requested.

16 JUDGE VANASKIE: All right. Did you want to say
17 anything else on this issue beyond what you put in the letter?
18 And I have perused the transcript. I haven't read the
19 transcript word for word, but I certainly have looked through
20 it and looked at the sections that were cited by counsel and
21 certainly read the agenda letter that had lengthy excerpts from
22 Dr. Panigrahy's deposition.

23 Is there anything else you wanted to say on the issue,
24 Mr. Trischler?

25 MR. TRISCHLER: Well, Your Honor, I will defer to the

1 Court if you feel that additional -- if you have the
2 information you need. I think certainly it's one of those
3 issues where I believe the Court probably needs to look at the
4 transcript and make a determination as to whether or not the
5 witness was responsive to questions and whether the inability
6 to complete the deposition in the time designated as a result
7 of his responsiveness or nonresponsiveness. I'm happy to
8 provide you with additional input. By the same token, I'm
9 sensitive to the Court's schedule and the Court's desire. So
10 if you'd like to hear specifics, I'm happy to get into it since
11 I have been present and a participant in most of the
12 depositions of the plaintiffs' experts and I'm certainly one of
13 the examiners of Dr. Panigrahy, so I'm happy to talk specifics
14 if you'd like, but I do want to be deferential to the Court's
15 preference.

16 JUDGE VANASKIE: How much additional time, Mr.
17 Trischler, do you believe you require for completion of this
18 deposition?

19 MR. TRISCHLER: Your Honor, since -- since the time of
20 the deposition itself, as you probably know, there was some
21 discussion about myself and perhaps two other examiners, the
22 defendants have talked and agreed that I can complete the
23 deposition and cover areas that other counsel were planning on
24 covering. So I think I can safely represent to the Court that
25 if additional time were permitted, I would be the only

1 remaining examiner of Dr. Panigrahy, and I fully anticipate
2 that I would be able to address the issues of concern that have
3 yet to be covered in the three hours that we have requested.

4 JUDGE VANASKIE: Who will be addressing this issue on
5 behalf of the plaintiffs?

6 MR. NIGH: This is Daniel Nigh on behalf of the
7 plaintiffs.

8 JUDGE VANASKIE: All right, Mr. Nigh, you defended the
9 deposition, I take it?

10 MR. NIGH: I did, Your Honor.

11 JUDGE VANASKIE: All right. You know, I looked at
12 some of the excerpts that were cited to me. It did seem that
13 the deponent rambled on at times. Why would it be
14 inappropriate to give additional three hours of deposition
15 here?

16 MR. NIGH: Well, I think the standard goes two ways
17 and I think already the defendants have already had three more
18 hours than what the Federal Rules allow; but many of these
19 times where, you know, answers went on were because of the
20 choice and the style of questioning, as I put in the papers. I
21 mean, we can see a clear contrast between the styles and we can
22 see a clear contrast in terms of the length of the responses.
23 And, you know, I'd also say that in terms of, you know, any
24 sort of intentional, you know, on the behalf of the witness is
25 just not there. You can also see in terms of how he responds

1 to Mr. Trischler's questions, in more than half of the answers
2 his responses are one-word answers. And so I think that's very
3 important here.

4 Mr. Fowler chose to, you know, ask numerous hours about
5 his background. That was their choice to spend their time in
6 that way and also used loaded questions in doing so, which led
7 to lengthier responses.

8 So I think that those, you know -- and oftentimes would
9 insist on a yes or no when you can't give a yes or no to a
10 question like why did you fail to complete your surgical
11 residency because the answer's not that he failed at all. So
12 he had to explain why he chose to become a cancer researcher.
13 And so the styles of questions is what led to his going on and
14 on, you know, in terms of the amount of time and the length of
15 the questions. And on numerous occasions I advised that to the
16 questioning attorney during the deposition and said, you know,
17 it's the type of questions that you're asking that lead to
18 these lengthier responses.

19 Are there a few occasions that, you know, Dr. Panigrahy
20 spoke lengthier than what the questions asked for? Yes, but I
21 think that that's in response to overt overloaded questions,
22 the argumentative style that was chosen and a ten-hour record
23 deposition that that sort of thing will occur.

24 So I don't think that there's anything here that
25 suggests that, you know, Dr. Panigrahy was trying to obstruct.

1 I think it's the opposite, he was trying to work with counsel.
2 Anytime that they showed documents, he responded quickly,
3 followed along quickly with them. You know, it wasn't any sort
4 of thing where he was purposely trying to run out the clock.
5 You know, he was clearly trying to, you know, respond quickly,
6 follow along documents quickly.

7 And so, frankly, the other thing that is probably the
8 most annoying about the whole process is that at no time did
9 the defendants ever, you know, ask to call the Court because
10 they thought the responses were too lengthy. I think we could
11 have taken some of those responses individually and explained
12 how they weren't at that time. But now, you know, almost three
13 weeks later, after the deposition is concluded, to ask the
14 Court for relief I think is untimely, especially given the
15 schedule that we have here, and I think it's gamesmanship on
16 the part of the defendants, which is, let's go ahead and
17 have -- try to get additional time after all of the defense
18 experts have been deposed. And so that way we can get the
19 first bite at the apple and the last bite at the apple, and
20 that appears to be what's occurred here.

21 JUDGE VANASKIE: Mr. Trischler, that seems to be a
22 fair observation. I was wondering why this wasn't raised
23 sooner. The deposition was completed on the 10th of September
24 and here we are at the end of September you're raising the
25 issue of additional time to conclude the deposition.

1 Now, I know that at the end of the deposition, I did
2 look at the transcript, and you did indicate the amount of time
3 that was needed to complete the deposition but why wasn't this
4 issue raised sooner with the Court?

5 MR. TRISCHLER: I'm happy to address that, Your Honor.

6 It became clear to me, in listening to the testimony,
7 that the witness was nonresponsive to a great number of
8 questions. And, you know, Mr. Nigh talked about intent. It's
9 really not a matter of intent. You don't have to infer intent
10 to prolong a deposition or intent to run out the clock. The
11 issue is one of effect. His nonresponsiveness created a
12 situation where the deposition just simply could not get done
13 in time.

14 And in my humble opinion, as I sat there and listened
15 to the testimony and tried to put myself in Your Honor's
16 position, if we were to have called you at that time and said,
17 Judge, the witness is not being responsive to the questions, I
18 think the Court's response would have been, look, I'm going to
19 need to review the transcript and tell you that and decide what
20 relief can be done. I'm not there, I can't address it then.
21 We actually had that situation, I think it was in Dr. Hecht's
22 deposition. Dr. Hecht is another one of their experts who I
23 took the lead on deposing, and we had that very situation where
24 Mr. Slater contacted the Court at some point during the
25 deposition after about seven or eight hours of testimony, and

1 the Court's response at that time was, look, I'm not going to
2 stop the deposition, I'll need to read it. If there's issues,
3 bring it to my attention. And I think the same would have held
4 true here.

5 Until you look at the full context, because context is
6 always important, until you look at the totality of the
7 testimony, there is no way to make a fair determination. So in
8 my judgment at that time, based on listening to the testimony,
9 the only way this Court was going to be able to make a
10 reasonable determination as to whether or not the inability to
11 complete the deposition in the time allotted was due to the
12 witness's nonresponsiveness was to look at the totality of the
13 transcript.

14 And so I think we have presented this to the Court in
15 the first scheduled conference following the completion of that
16 deposition. I think we are about as timely as we could be in
17 bringing the issue before Your Honor.

18 JUDGE VANASKIE: All right. Thank you.

19 Mr. Nigh, anything else?

20 MR. NIGH: Yeah, I would just respond that, you know,
21 we took a break for day one, we had multiple hours, we could
22 have, you know, had some conference at nighttime, we could have
23 done it in the morning, and, frankly, a rough draft you can
24 have that right at the conclusion of that break. I mean, the
25 court reporter was doing it, we had real-time transcript, we

1 could have had a rough transcript to be able to look at that.
2 I don't understand to put himself in your shoes because I think
3 timely-wise, it could have absolutely been something that you
4 would have had the materials that you needed to look through
5 and make some sort of ruling and then we wouldn't have to be
6 disturbing Dr. Panigrahy, which, you know, in terms of his
7 schedule, I don't know his schedule. I don't know if he will
8 have the ability to -- you know, when the next day is that he's
9 going to be able to even offer at this point. The way the
10 schedules worked is we were giving our experts a month in
11 advance to disclose dates that are a month later. And so here,
12 you know, frankly, we have been deprived of that ability if
13 this -- if this had been raised sooner, and I think they had
14 every ability to do so. You take a rough draft of the
15 transcript and you raise the argument. And certainly, even if
16 you wanted a final transcript, you could rush that in a couple
17 of days. The fact that it took, you know, almost 20 days after
18 the conclusion of the deposition is, you know, to me, you know,
19 concerning.

20 That's all I have.

21 JUDGE VANASKIE: All right.

22 MR. TRISCHLER: Your Honor, if I may?

23 JUDGE VANASKIE: Anything else, Mr. Trischler?

24 MR. TRISCHLER: If I may, Your Honor?

25 JUDGE VANASKIE: Yes.

1 MR. TRISCHLER: Notwithstanding Mr. Nigh's express
2 concern, the issue, you know, I would submit, is one of
3 prejudice. The fact that we are 20 days after the deposition
4 is not unfairly prejudicial to anyone. We can find three hours
5 of this man's time and my time to get this deposition done and
6 that I have no doubt.

7 And as I mentioned before, I think on any of these
8 discovery issues, I think context is always important. This is
9 a complicated case with many complex issues where the time
10 limits of the Federal Rules of Civil Procedure have been set
11 aside multiple times. We have had defense witnesses deposed by
12 plaintiffs for 21 to 28 hours of testimony, given what the
13 plaintiffs have argued is the complexity of the case and the
14 number of issues that they needed to address. And so on what
15 is the absolute core issue in this case of whether, you know,
16 the small amounts of nitrosamines allegedly present in the
17 defendants' valsartan-containing medication has the capability
18 of causing cancer, that is the key issue in this case. On that
19 key issue, to not allow three additional hours of testimony of
20 a witness who submitted a 222-page report with over 560
21 citations to scientific literature that he purports to rely
22 upon I think would be unfair. There's -- you know, the thing I
23 find interesting is that at no point in time, you know, did
24 plaintiffs -- if you read the transcript, Judge, never did Mr.
25 Nigh object that testimony was asked and answered, that the

1 defendants were being repetitive, that they were plowing new --
2 that they were plowing old ground with the witness, none of
3 that. These are important issues that need to be explored with
4 a witness that the plaintiffs are going to try and rely upon to
5 get -- to meet their burden of proof. And I think allowing
6 three additional witnesses -- three additional hours of
7 examination, excuse me, when my company witnesses have had to
8 sit through 21 hours of testimony in some cases, is not an
9 unfair or unreasonable request.

10 MR. NIGH: Your Honor, can I respond to that?

11 JUDGE VANASKIE: You certainly may, Mr. Nigh.

12 MR. NIGH: I certainly objected on multiple occasions
13 that information had been retread numerous times. If you just
14 look at the background information that's not even into the
15 case, defendants chose to spend hours upon hours on background
16 information, many of the questions being completely repetitive,
17 that was their choice, and, you know, Mr. Trischler wasn't the
18 one questioning during that time but, frankly, he shares, as
19 leadership counsel, with the other counsel. And so they have a
20 duty together to figure out how to split up their ten hours.

21 We heard the ruling on this. This argument was
22 presented to get ten hours, the amount of pages that the --
23 Panigrahy's report, that's how we got ten hours in the first
24 place. And, frankly, what we found out was the number of pages
25 in the report didn't dictate the amount of time because I also

1 defended Dr. Etminan's deposition. His report is 30 pages or
2 less and they still took ten hours or nearly ten hours of time.
3 They reserved a little small chunk of time for rebuttal but
4 they still went the distance. And so the argument that because
5 it's this number of pages, that's been argued; they got ten
6 hours and they used it on multiple different witnesses, the
7 full ten hours or nearly the full ten hours.

8 JUDGE VANASKIE: All right. Thank you.

9 As I said, I have reviewed the transcript, I certainly
10 have reviewed the agenda letters. There were very lengthy
11 responses given by the deponent during the course of the
12 deposition, there may have been some redundancy in questioning,
13 but I find that the request for an additional three hours of
14 deposition time is not unreasonable and will allow it so that
15 this deposition can be concluded.

16 I would ask that you make contact with Dr. Panigrahy and
17 see when this deposition can be concluded.

18 I will not grant more than three hours. I would expect
19 that if you encounter any difficulty during the course of the
20 deposition that there will be an effort to contact me so that
21 it doesn't -- we don't end up in another conference call
22 discussing the deposition after it has been completed and
23 there's requests for additional time.

24 So I think given all the circumstances, three hours is
25 -- three additional hours is not unreasonable here and will

1 grant the request for that additional three hours of deposition
2 time.

3 All right. The next item I had on the agenda dealt with
4 subpoenas that were issued to Anthem, SummaCare, ConnectiCare,
5 C-o-n-n-e-c-t-i-C-a-r-e, and Emblem Health, and I take it
6 there's nothing for -- this is just notifying me that this
7 issue may end up before me. Is that correct? Who is speaking
8 on --

9 MS. ANDRAS: Your Honor, this is Tiffany Andras on
10 behalf of defendants and I represent Teva Pharmaceuticals. I
11 will be speaking on this issue on behalf of defendants.

12 Before going to any other details, I think I want to
13 clarify some things about procedural history of what's going on
14 with these motions.

15 In plaintiffs' statement submitted to Your Honor
16 yesterday, they indicated that we have requested to transfer
17 the motion. I just wanted to clarify for the Court that no
18 motions to transfer have yet been filed. These motions to
19 quash were just filed on Monday. And so we disagree that there
20 is nothing for this Court to do with regards to those
21 subpoenas.

22 And further, yesterday, the Northern District of Ohio
23 actually terminated the SummaCare action because it was
24 incorrectly filed. So as of right now we're really only
25 dealing with the ConnectiCare motion to quash that's pending.

1 I just wanted to say that we think that if this is Your
2 Honor's view, and it's certainly our view, that these motions
3 should be heard and decided by this Court, that would be
4 something that would certainly, we think, be helpful for the
5 district court evaluating whether transfer to the MDL is
6 appropriate here.

7 JUDGE VANASKIE: And who will be addressing this issue
8 on behalf of the plaintiffs?

9 MS. WHITELEY: Your Honor, this is Conlee Whiteley.
10 The person who's been handling this is in a deposition and so
11 he asked me to speak on his behalf today.

12 We agree with your first reading, which is, there's
13 nothing in front of the Court to decide today. This is more
14 information to let you know what is going on and should it come
15 before the Court, we're happy to address it at that time.

16 JUDGE VANASKIE: Well, I certainly think there's good
17 reason why the motions to quash should be transferred to this
18 Court. It seems to me that makes the most sense. But until
19 and unless there's the appropriate submission made to the
20 Connecticut court, the Ohio matter has been dismissed, I'm not
21 sure what needs to be done to put it in a setting where it can
22 be resolved or a decision can be made. Something needs to be
23 done so that we get these matters resolved.

24 If you need some indication from this -- from the
25 Special Master that the Special Master is of the opinion that

1 it would serve the interests of judicial efficiency and economy
2 to have the matters transferred to the District of New Jersey
3 to be part of this MDL, I certainly can do that; but right now
4 I think it's accurate that I don't have in front of me any
5 matter that I could decide.

6 Does anybody disagree with that?

7 MS. WHITELEY: Your Honor, this is Conlee Whiteley
8 again. These plaintiffs are represented by different counsel
9 in these motions. I believe the SummaCare motion has been
10 re-filed and it's live again. And so I think the first step in
11 addressing this is their response to those filings at which
12 time, you know, it can be expressed what your opinion is.

13 JUDGE VANASKIE: Okay. Very well.

14 Is there any other matter to discuss with respect to
15 these subpoenas?

16 MS. ANDRAS: This is Tiffany Andras again for
17 defendants. I believe that's it. But just for clarity of the
18 record, you know, is it the Court's view that this is something
19 that should be decided before the MDL?

20 JUDGE VANASKIE: It is, it is my view. It is the
21 Special Master's view that it makes most sense to have the
22 forum where this matter's pending and have the forum where the
23 discovery issues have been thoroughly presented and
24 comprehensively examined to address this one as well. I know
25 if I was in the shoes of the court in Connecticut or Ohio, I'd

1 be of the view that it would be more efficient to have this
2 where the main action is pending. But y'all can take the
3 appropriate action to see if that can happen. In the meantime,
4 there's nothing for me to do right now on this particular
5 dispute.

6 MS. ANDRAS: Thank you, Your Honor. We appreciate
7 that. Nothing further.

8 JUDGE VANASKIE: All right. Thank you.

9 The next item on the agenda letter deals with an
10 agreement on the deadline for the ZHP parties to move to seal
11 documents. And y'all have agreed that the deadline shall be
12 October 12 I think.

13 MR. GOLDBERG: Your Honor, this is Seth Goldberg on
14 behalf of the ZHP parties and that's correct.

15 JUDGE VANASKIE: All right. Do you need to submit to
16 me a proposed order or is it sufficient that you've reached
17 this agreement and you've memorialized it in the agenda letter?

18 MR. GOLDBERG: I would think that that would be
19 sufficient, that it's been memorialized. It's on the record
20 now.

21 JUDGE VANASKIE: I believe that's sufficient as well.
22 So you've all reached agreement on it, I don't think there's
23 any need to add to the docket in this case with another order.

24 The next item is the parties' stipulation on class
25 certification briefing page limits. And it seems to me that

1 this might be a matter that Judge Kugler needs to bless as
2 opposed to the Special Master approving the stipulation.
3 Anybody want to weigh in on that?

4 MS. WHITELEY: Your Honor, this is Conlee Whiteley on
5 behalf of the plaintiffs. I believe that the last time we had
6 a page limit agreement of this nature, it was presented to the
7 Court and then after that time there was a discussion with
8 Judge Kugler and we ultimately -- he gave guidance and there
9 was a ruling that followed. So he was involved in the first
10 instance.

11 JUDGE VANASKIE: Okay.

12 MS. WHITELEY: And I realize that these -- the number
13 of pages may seem large at this time but we would hope that he
14 would bless this agreement between the parties because after a
15 meet and confer and discussion of all the issues that we need
16 to lay out and hopefully in a very organized manner, we do
17 believe that the extra pages would be needed. And this brief
18 is due on November 3rd, along with any expert declarations in
19 support of that motion, and there's a -- you know, in order to
20 have a conference and brief which the parties -- at least the
21 plaintiffs at this time are planning to have their class brief
22 track the plaintiffs' motion to amend and include the
23 plaintiffs that were, you know, proposed in the proposed
24 amended complaint. Unless the Court directs us otherwise,
25 that's our current intention, with the briefing due just about

1 a month from now.

2 JUDGE VANASKIE: Okay. Does anyone want to weigh in
3 on this matter from the defense side?

4 MR. GOLDBERG: Your Honor, this is Seth Goldberg. I
5 think Ms. Whiteley stated the parties' agreement on the page
6 limits accurately. I think the issue about whether the new
7 plaintiffs that have been named in the amended complaints or
8 proposed amended complaints, which have not yet been granted
9 and are not yet operable, is an issue that I think we haven't
10 discussed and it really isn't something we discussed in the
11 context of the agreement on page limits. It's sort of a
12 separate issue and I think we'll just reserve our right to
13 raise that issue at the appropriate time.

14 JUDGE VANASKIE: All right. Very well.

15 MS. WHITELEY: Your Honor, this is Conlee Whiteley
16 again. I did not mean to imply that that was part of the meet
17 and confer which dealt with just page limits.

18 JUDGE VANASKIE: Okay.

19 MS. WHITELEY: I was just explaining our current
20 situation.

21 JUDGE VANASKIE: All right. Very well.

22 Then we have the status update on the newly named class
23 representatives, and it looks like that's proceeding in an
24 appropriate way and in a timely way. Is there any additional
25 information you wanted to provide with respect to the status

1 today? There are some questions with respect to some of the
2 Plaintiff Fact Sheets but I take it you're all conferring on
3 that and getting it accomplished. Is that accurate?

4 MS. WHITELEY: Your Honor, this is Conlee Whiteley
5 again. We will -- there will probably always be a few
6 lingering issues with the fact sheets but what we wanted to do
7 was get them in as soon as possible with the bulk of the most
8 important information as to the medications that were taken and
9 when they were taken, and so that the defendants have the gist
10 of the information and can start their preparation and they
11 will be supplemented through additional information that we can
12 get from plaintiffs or through the meet-and-confer process.
13 But we have been very active. We had a meet and confer with
14 the defendants just last week and it is just rolling along and
15 we are working cooperatively.

16 JUDGE VANASKIE: Great.

17 All right. The next item I have on the agenda letters
18 request for a hearing with live expert testimony on the *Daubert*
19 motions and I believe that that's also a matter for Judge
20 Kugler. So he will have to address that and you can raise that
21 with him as well. I'm not sure right now it's ripe but it
22 certainly can be raised with him.

23 And then the final item I have on the agenda is the
24 information that's provided to third-party witnesses to have
25 the option to have their deposition taken by remote technology.

1 Who will be addressing this issue on behalf of the
2 defense?

3 MR. HARKINS: Good morning, Your Honor. This is Steve
4 Harkins with Greenberg Traurig for the Teva defendants and the
5 Joint Defense Group. I'll be addressing this on behalf of the
6 defendants.

7 JUDGE VANASKIE: All right. I've read the letter. I
8 guess there was concern that one witness did not recall having
9 been given the option to have the deposition occur remotely,
10 but you've provided me with information that you say she was
11 given that opportunity. And I guess there's some issue here
12 with respect to what is being communicated to the third-party
13 witnesses and I guess there's a concern on the part of the
14 plaintiffs that -- well, I don't want to -- I don't want to
15 speak.

16 Who will be addressing this issue on behalf of the
17 plaintiffs?

18 MS. GOLDENBERG: Your Honor, this is Marlene
19 Goldenberg for the plaintiffs.

20 JUDGE VANASKIE: Good morning.

21 MS. GOLDENBERG: Good morning.

22 JUDGE VANASKIE: So what are you looking for to have
23 accomplished here? What would the plaintiffs like to see as a
24 resolution of this matter?

25 MS. GOLDENBERG: Sure. And, thankfully, this isn't

1 one of those issues that I think needs to take a ton of Your
2 Honor's time because we've already discussed it, but based upon
3 what we saw in the previous deposition, you know, it is our
4 understanding that what the third-party witnesses are hearing
5 from the defendants is that while they have the option to have
6 a deposition be taken via Zoom, the defendants would strongly,
7 strongly prefer that it take place in person and that all
8 reasonable accommodations can be made. So it sounds like an
9 offer in name only. We'd like the witness just to be given the
10 offer exactly the way the Court said; that it truly is the
11 witness's decision. And if they want something in person, then
12 those extra options can be offered. And that's it.

13 MR. HARKINS: Your Honor, if I might briefly, just on
14 behalf of the defense.

15 JUDGE VANASKIE: Yes.

16 MR. HARKINS: You know, I think the fact that more
17 than half of these treater depositions have been proceeding
18 remotely, including numerous depositions that are scheduled by
19 the defendants, makes pretty good that this is not an offer in
20 name only. These communications, at least from our office, are
21 being made by a nurse paralegal. The scheduler is not on the
22 phone with an attorney. We have been very clear about how they
23 are to present the options and make sure that they're aware if
24 there are any COVID considerations or health concerns that, you
25 know, would require a remote deposition, they certainly can do

1 that. And, you know, the fact that we do indicate that our
2 preference is, and, you know, it's no secret that it is
3 defendant's preference, strong preference, to take these
4 depositions in person, you know, we don't think that that gets
5 anywhere near coercing these individuals to appear in person.
6 I think this is almost a little more -- I believe than the
7 Court necessarily needs to be giving the parties on this. She
8 needs to be proceeding without really any issue except for this
9 single instance where a witness largely, you know,
10 mis-remembered what was presented to her office.

11 JUDGE VANASKIE: Yes, I don't think there is a need
12 for any action on my part, now, with respect to the
13 communication that goes out to the third-party witnesses. As
14 long as they are told that it's their decision whether to
15 proceed with a deposition via advanced communication
16 technology, do it remotely, or to appear in person, as long as
17 they know that they make the decision, I think you're fine.
18 Even if the defense says it's our preference that we do it in
19 person, it still is the deponent's prerogative to have the
20 matter handled remotely, and I think that's adequate. So as I
21 said, I don't think there's any need for any action on my part,
22 on the part of the Special Master at this time.

23 I think that concludes the agenda letter.

24 I will issue an order that allows for the resumption of
25 the deposition of Dr. Panigrahy for an additional three hours

1 but not more than three hours.

2 Is there anything else you wanted to bring to my
3 attention now before we get Judge Kugler on the phone?

4 MS. WHITELEY: Your Honor, this is Conlee Whiteley
5 again.

6 Is it your preference that we raise the page limit issue
7 with Judge Kugler today or do you want to speak with him and
8 have it discussed at a later time?

9 JUDGE VANASKIE: I think you should raise it with
10 Judge Kugler today. I do think -- as I said, I think that's an
11 issue for him to bless. You've reached your stipulation, both
12 sides agree. He has to decide whether he wants to accept
13 briefs of that length. I think that's it. So I think you
14 should raise it. He may not be able to give you his answer
15 today but I think that's appropriate, just like I don't think
16 he can give you an answer today about the format of any hearing
17 on the *Daubert* motions until they've actually been filed and
18 presented. You're certainly free to raise that with him as
19 well, since you've at least, you know -- you've provided
20 notice, which is great, so everybody knows that that's an issue
21 that's going to have to be addressed, but there's not much else
22 that can be done on that right now. But yes, I would think you
23 would want -- because you want to get that -- certainly you
24 want to know that you have that length of briefs because I'm
25 sure you're starting to work on them already.

1 Is there anything else you want to raise with me today?

2 MR. GOLDBERG: Nothing for defendants, Your Honor.

3 JUDGE VANASKIE: All right.

4 MR. SLATER: I don't believe there's anything else for
5 plaintiffs, Your Honor.

6 JUDGE VANASKIE: Okay. I was going to say you
7 probably should raise things now with me because I'm losing my
8 voice, I won't be able to do anything.

9 But I'm going to drop off the call now and we'll get
10 Judge Kugler on, I'll rejoin you once we have Judge Kugler on
11 the phone. All right?

12 MR. GOLDBERG: Thank you, Your Honor.

13 JUDGE VANASKIE: All right. Thank you.

14 (Brief recess taken at 10:39 a.m.)

15 JUDGE VANASKIE: All right. Judge Kugler has been
16 contacted and should be joining us shortly.

17 JUDGE KUGLER: Good morning. It's Judge Kugler. I
18 hope everyone is well today.

19 MR. SLATER: Hello, Judge. How are you?

20 MS. GOLDENBERG: Hey, Your Honor.

21 JUDGE KUGLER: Who's the court reporter? I assume we
22 have somebody. Karen or somebody.

23 THE COURT REPORTER: It's Camille, Judge. Good
24 morning.

25 JUDGE KUGLER: Hi, Camille. How are you?

1 THE COURT REPORTER: I'm well, thank you. And
2 yourself?

3 JUDGE KUGLER: Very well, thank you.

4 Well, why don't we get started right in. The
5 defendants' letter lists the orders to show cause, but
6 apparently five of the six have been resolved. Is that
7 correct? Who will speak for the defendants?

8 MR. HARKINS: Good morning, Your Honor. This is Steve
9 Harkins from Greenberg Traurig for the Teva defendants and the
10 Joint Defense Group. I'll be handling this on behalf of the
11 defendants.

12 Your Honor's correct, we only have one case, the Thomas
13 Lloyd case, which remains unresolved. So at this time the
14 defendants would request that that case be dismissed.

15 JUDGE KUGLER: Anybody want to speak for the plaintiff
16 Thomas Lloyd?

17 MS. BROWN: Yes, Your Honor. My name is Erin Brown on
18 behalf of David Rheingold, counsel for plaintiff Thomas Lloyd.

19 We submitted an amended PFS on August 26. However,
20 we're still waiting for additional records to supplement the
21 PFS and once the records come in, we will be supplying them.

22 JUDGE KUGLER: Well, clearly you've had a long time to
23 get these records today. I am going to grant the order of
24 dismissal. You can always move to set it aside and perhaps Mr.
25 Harkins will consent to that if you get him the records that he

1 needs. So I will grant that motion to dismiss on the Thomas
2 Lloyd matter.

3 So the Hector Rivera, Burlia Abdullahi,
4 A-b-d-u-l-l-a-h-i, Sandra Russell, Benita Smiley, and Jimmie
5 Thorn, they'll all be dismissed because they've been resolved.

6 So that leaves a request to list --

7 MS. GOLDENBERG: Your Honor, I'm sorry to interrupt.
8 This is Marlene Goldenberg. I just wanted to make sure the
9 record was clear, those cases will not be dismissed because
10 they've been resolved, right?

11 JUDGE KUGLER: You're right. I'm sorry. I should
12 have been more precise. The orders to show cause will be
13 dismissed.

14 MS. GOLDENBERG: Thank you.

15 JUDGE KUGLER: I'm sorry about that.

16 So, Mr. Harkins, on these you seek to get an order to
17 show cause. Are there any changes in those?

18 MR. HARKINS: We have one update, Your Honor. The
19 issues in the Tamara Ledkins case, number one on the list, have
20 been resolved, so we are withdrawing our request there. We've
21 requested orders to show cause returnable at the October case
22 management conference for the other three cases on the list.

23 JUDGE KUGLER: All right. Rex Phillips, anyone want
24 to speak on behalf of Rex Phillips?

25 (No response).

1 JUDGE KUGLER: That will be moved to an order to show
2 cause why that shouldn't be dismissed.

3 Valentin Landau, L-a-n-d-a-u, anybody want to speak on
4 that one?

5 MR. SPOERER: Your Honor, this is plaintiff's counsel
6 for the individual Valentin Landau. We had received a
7 deficiency notice based on our Plaintiff Fact Sheet. We timely
8 submitted our first Plaintiff Fact Sheet July 9. We received a
9 deficiency notice July 31st. We uploaded onto MDL Centrality
10 our First Amended Plaintiff Fact Sheet on September 3rd and
11 there has not been an additional deficiency notice uploaded, so
12 I believe that the show-cause request may be an error.

13 JUDGE KUGLER: Can you tell us your name please, sir?

14 MR. SPOERER: I'm sorry. My name's David Spoerer for
15 the plaintiff Valentin Landau.

16 JUDGE KUGLER: Thank you.

17 Mr. Harkins, any update on that, given that information?

18 MR. HARKINS: Your Honor, the defendants have not been
19 submitting successive deficiency notices when amended and
20 supplemental PFSs are filed. Our practice has been to provide
21 a list of remaining outstanding deficiencies to plaintiffs
22 leadership counsel for distribution and then to hold the global
23 meet and confers each month on which we provided a list of the
24 outstanding issues, despite the supplemental Plaintiff Fact
25 Sheet submitted for Mr. Landau. It may be confusion more about

1 our process here. I will note that to the extent there are
2 issues that can be resolved before the order to show cause
3 returnable at the October case management conference, we would
4 certainly withdraw that request at that time; but as of today,
5 and as of our submission to the plaintiffs' Executive Committee
6 with regard to the outstanding deficiencies last week, there
7 are still outstanding deficiencies on this fact sheet. We'll
8 certainly work with plaintiffs' counsel to resolve those as
9 long as they're continuing to provide information.

10 JUDGE KUGLER: Why don't the two sides work together.
11 We will keep it on for the October show-cause list. That gives
12 you another month to get that resolved. As I think you've all
13 seen, the defendants are not hesitant to seek dismissal of the
14 show-cause orders if things get resolved by that date. So
15 we'll list that for order to show cause for now.

16 Helen Rice, anybody from the Moll, M-o-l-l, Law Group,
17 want to speak on behalf of that or any other plaintiffs'
18 counsel want to speak on behalf of Helen Rice?

19 MS. ABUZERR: Good morning, Your Honor. This is
20 Fatima Abuzerr on behalf of Helen Rice. We were just having
21 issues uploading the authorizations with -- onto MDL Centrality
22 and Brown Greer, but we have been working with Brown Greer,
23 which is why we've been able to successfully resolve the issues
24 with Ledkins, so we're working on Rice.

25 JUDGE KUGLER: Okay. Well, continue to work. We will

1 list it for October as an order to show cause and hopefully by
2 then you will get it all resolved and we won't have to do
3 anything in the October meeting. Okay?

4 MS. ABUZERR: Okay. Thank you so much.

5 JUDGE KUGLER: There are two cases, Denton,
6 D-e-n-t-o-n, and Achkov, A-c-h-k-o-v, Mr. Harkins, you want to
7 list again; is that correct?

8 MR. HARKINS: That's correct, Your Honor. We have no
9 updates on these two cases. We would just ask to list them
10 again for next month's agenda.

11 JUDGE KUGLER: Anybody want to speak on behalf of
12 these two plaintiffs?

13 (No response).

14 JUDGE KUGLER: All right. No response. We'll re-list
15 them for the October listing.

16 And then there are four, Mr. Harkins, you want to list
17 for the first time, Shawna Martinez, Kevin Howard, Steven
18 Gregory Johnston, and Beverly Cook, any updates on those?

19 MR. HARKINS: No updates on those from the defense,
20 Your Honor.

21 JUDGE KUGLER: Anybody from the plaintiffs' side want
22 to speak about these four?

23 (No response).

24 JUDGE KUGLER: All right. No response. We'll just
25 list them again in October.

1 Now, there's also been an issue raised in your agenda
2 letters about the *Daubert* hearings, and defense wants live
3 expert testimony when those are scheduled.

4 Who wants to speak about this for the defense?

5 MR. GOLDBERG: Good morning, Your Honor. This is Seth
6 Goldberg on behalf of the ZHP parties and the defense.

7 JUDGE KUGLER: Good morning, Mr. Goldberg.

8 MR. GOLDBERG: Good morning.

9 Your Honor, I think the issue here is that we just want
10 to make sure that we have a hearing scheduled to have the
11 *Daubert* motions heard, and we thought we'd raise it with Your
12 Honor now given that the *Daubert* motions will be filed at the
13 beginning of November and just looking to January, wanted to
14 make sure that we had dates on Your Honor's calendar. We
15 didn't want to wait too late to have those dates reserved.

16 In our view, these issues are incredibly complex, you've
17 got issues related to epidemiology and toxicology and
18 pathology, cell biology, organic chemistry, the general
19 causation issue has really resulted in an extensive record of
20 expert testimony on both sides, hundreds of articles have been
21 cited, and we really think that given the importance of this
22 issue in this case, it needs to be presented to Your Honor with
23 an oral argument and, as necessary, testimony of experts, and
24 so wanted to have that time with Your Honor in January.

25 JUDGE KUGLER: Well, when you say you're seeking a

1 hearing, define what you mean by hearing. What do you think
2 takes place at such a hearing?

3 MR. GOLDBERG: Well, I think, Your Honor, we would
4 want to present the *Daubert* motions, we would want to have Your
5 Honor hear live testimony from those experts that either
6 plaintiffs believe or defendants believe should be explaining
7 their causation opinions and the basis of their opinions to
8 Your Honor so Your Honor can review and evaluate the
9 credibility of the witnesses and the basis of their opinions.

10 JUDGE KUGLER: Well, I don't know about evaluating
11 credibility of the witnesses; but let's assume, I think it's a
12 safe assumption, that you're going to be attacking the
13 plaintiffs' experts across the board. Now, the way *Daubert*
14 hearings are arranged I think in the Third Circuit is it's
15 really up to the defending party, in this case the plaintiffs,
16 to determine whether or not they want to present live testimony
17 from their expert they're seeking to defend. They may well,
18 and I've had many instances where this has happened, decide
19 that the report and the deposition testimony is sufficient to
20 meet the objection of the defendants, and they live or die by
21 that decision; but that's really their decision to make whether
22 they want to present testimony.

23 The point of testimony at a *Daubert* hearing is not to
24 reiterate everything that the expert has said, it's certainly
25 not to introduce new opinions into the mix, but it's, in

1 effect, to explain where there might be holes in how they
2 arranged their methodology to find these opinions in order to
3 meet specific objections made by, in this case, the defendants.
4 So I don't require -- I normally don't require the experts to
5 actually testify. I leave it up to the party deponent to
6 determine whether the testimony is necessary. And at this
7 point I really can't -- I can't judge whether testimony's going
8 to be necessary because I don't, obviously, have your motions
9 yet. But that's generally how I think *Daubert* motions go in
10 this Circuit. And I've had them both ways. I've had instances
11 where the party defending the expert seeks to have testimony,
12 that's fine; that's their choice. But I generally don't -- I
13 generally don't make that decision until I see what the expert
14 reports and the deposition testimony is and I can make a
15 determination as to whether or not it's comprehensive enough to
16 meet the standards in the Third Circuit.

17 So I understand what you're saying and I can tell you
18 that when you finally do file these motions, it certainly will
19 be one of my priorities to get to them because so much of the
20 rest of this case depends on the expert opinions.

21 So at this point, in September, that's about all I can
22 tell you, Mr. Goldberg. But, you know, thanks for raising it
23 and it's certainly something that we will be discussing in the
24 future as we get closer and closer to the dates where you get
25 these things filed. Okay?

1 MR. GOLDBERG: Thank you, Your Honor.

2 JUDGE KUGLER: All right. Anything else anybody wants
3 to say at this point?

4 MS. WHITELEY: Your Honor --

5 JUDGE KUGLER: Go ahead, Conlee.

6 MS. WHITELEY: Your Honor, this is Conlee Whiteley and
7 I wanted to -- for plaintiffs and I wanted to raise with you
8 the parties' stipulation on the class certification briefing
9 limits.

10 JUDGE KUGLER: Yes. I was wondering if there was a
11 typo in those papers, 160 pages.

12 MS. WHITELEY: Well, it's funny that you mention that
13 because there is actually a typo in our submission, but, yes,
14 we are requesting 160 pages for each side. There are some
15 perfunctory items that will have to be included in the briefs
16 and given the number of defendants, plaintiffs, states and
17 claims involved, we thought that that would be -- we're
18 cautiously optimistic that that would be plenty of pages for us
19 to set all that out.

20 Our brief is due on November 3rd, along with the expert
21 declarations to support the brief. And as I mentioned in our
22 earlier discovery conference, it's our present intention to lay
23 out the brief along the lines of our motion to amend, unless
24 we're directed otherwise, and a full review of that, and we're
25 already working on the brief, that's the number we believe that

1 we need and we discussed that with the defendants in the meet
2 and confer, the page limits only, and they agreed that that
3 worked for them and us.

4 JUDGE KUGLER: Well, I mean I think I know the answer
5 to this but I'm assuming that this 160 pages is all inclusive
6 of all the plaintiffs and all the defendants, correct?

7 MS. WHITELEY: This is for the economic loss
8 plaintiffs' brief.

9 JUDGE KUGLER: Okay.

10 MS. WHITELEY: And it would include all the
11 defendants. There will be a separate brief filed for the
12 medical monitoring class but we would not be repetitive and we
13 would expect it would be a much shorter brief.

14 JUDGE KUGLER: So you're saying that there will be
15 four briefs submitted of 160 pages and two of 80 pages, and you
16 expect me to read that in what year?

17 MS. WHITELEY: No, Your Honor. Two 160-page briefs
18 and one 80-page reply, and then a much shorter brief just
19 addressing the medical monitoring issues and it can reference,
20 you know, the whole structure that's laid out in the larger
21 economic loss brief, because that includes the economic loss
22 consumer plaintiffs and the third-party payors. There are a
23 few separate issues that the medical monitoring plaintiffs will
24 need to address, but much of it is repetitive of what we will
25 address and we can include that there.

1 And I'm actually being told here that we are -- have
2 conceded that we can include the medical monitoring in those
3 160 pages.

4 JUDGE KUGLER: Oh, okay. Well there's progress
5 already today.

6 MS. WHITELEY: It was a message directly from God to
7 take something off your plate.

8 JUDGE KUGLER: Okay. Well, let's give it a shot then.
9 I will do my best, that's all I can tell you.

10 MS. WHITELEY: Thank you, Your Honor.

11 JUDGE KUGLER: You're welcome.

12 Anything else?

13 (No response).

14 MR. SLATER: This is Adam Slater. I don't believe
15 anything else from the plaintiffs, Your Honor.

16 MR. GOLDBERG: And nothing from the defendants, Your
17 Honor.

18 JUDGE VANASKIE: Mr. Slater, these are pretty good
19 days for your Yankee fans, huh?

20 MR. SLATER: They ebb and flow, Judge; they ebb and
21 flow.

22 JUDGE KUGLER: They're doing pretty well right now.

23 MR. SLATER: They are. They win, then they lose ten
24 in a row or seven in a row and they win a lot. It's hard to
25 jump on a bandwagon that keeps tilting one side to the other.

1 JUDGE KUGLER: I think you guys are in pretty good
2 shape; better than the Phillies anyway.

3 Everybody, enjoy the rest of the fall. Stay well, stay
4 safe, and we will talk to you in October. Thank you,
5 everybody.

6 MR. SLATER: Thank you, Your Honor.

7 MR. GOLDBERG: Thank you, Your Honor.

8 (The proceedings concluded at 11:00 a.m.)

9 - - - - -

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11 I certify that the foregoing is a correct transcript
12 from the record of proceedings in the above-entitled matter.

13

14 /S/ Camille Pedano, CCR, RMR, CRR, CRC, RPR
15 Court Reporter/Transcriber

16 September 30, 2021
17 Date

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